

E-Filed 6/8/15

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

VINCENT PRICE MCCOWAN,

No. C 13-3554 RS (PR)

Plaintiffs,

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS;**

v.

**ORDER SETTING BRIEFING
SCHEDULE**

B. HEDRICKS, et al.,

Defendants.

Defendants' 12(b)(6) motion to dismiss this federal civil rights action on grounds that plaintiff failed to exhaust his administrative remedies (Docket No. 11) is DENIED without prejudice. Defendants are directed to renew their arguments in support of dismissal by way of a motion for summary judgment, in light of the Ninth Circuit's ruling in *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014) (en banc). Although, as defendants assert, *Albino* permits defendants to raise nonexhaustion by way of a 12(b)(6) motion, the Court believes that more detailed briefing is necessary, especially regarding prison authorities' rejection of plaintiff's administrative grievance.

The motion for summary judgment, which can raise both procedural and substantive issues and defenses, shall be filed on or before September 15, 2015. The Court reminds

1 defendants that when they file a motion for summary judgment, they must provide plaintiff
2 with the warnings detailed in Section 10 of the order of service. Plaintiff's opposition to the
3 motion for summary judgment, if any, shall be filed within 45 days after defendants' motion
4 is filed. Defendants' reply, if any, shall be filed within 15 days after the opposition, if any, is
5 filed. The Clerk shall terminate Docket No. 11.

6 **IT IS SO ORDERED.**

7 DATED: June 8, 2015

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9 RICHARD SEEBORG
10 United States District Judge
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United States District Court
For the Northern District of California